UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVID KELLY, Plaintiff, v. JEFFERIES GROUP, INC., and FRED OSTROVE, Defendants.	CIVIL ACTION NO. _______ Removed from the District Court of Dallas County, Texas Cause No. DC-16-13823

DEFENDANT JEFFERIES GROUP LLC'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 *et seq*., Defendant Jefferies Group LLC, formerly known as Jefferies Group, Inc. ("Jefferies") files this Notice of Removal (the "Notice") and states:

I. INTRODUCTION

1. On October 24, 2016, Plaintiff commenced an action against Defendants Jefferies and Fred Ostrove in the district court of Dallas County styled *Kelly v. Jefferies Group, Inc. et al*., Cause No. DC-16-13823 (the "State Court Action") by filing its Original Petition (the "Petition"). Plaintiff asserts claims for violation of the Texas Securities Act, statutory fraud, breach of fiduciary duty, negligent misrepresentation, and professional negligence. A true and correct copy of the Petition is attached hereto as Exhibit A:3.

2. Jefferies' agent for service of process, CT Corporation System, was served with the Petition on October 29, 2016. True and correct copies of the summons and certificate of service on Jefferies are attached hereto as Exhibits A:5 and A:7.

3. Defendant Jefferies has timely filed this Notice of Removal within thirty (30) days of its receipt of a copy of the initial pleading and summons setting forth a claim for relief upon which such action is based. 28 U.S.C. § 1446(b).

II. BASIS FOR REMOVAL

4. Removal is proper because there is complete diversity of the parties and the amount in controversy in this civil action exceeds $75,000, excluding interest and costs. 28 U.S.C. §§ 1332(a), 1441(b).

5. Plaintiff alleges that, at the time the Petition was filed, and as of the date of this Notice, Plaintiff was and is a resident of Indian River County, Florida. Therefore, Plaintiff is a citizen of Florida. *See* Pet. ¶ 2.01.

6. Plaintiff summarily and incorrectly states in the Petition that Jefferies has its "principal office for business in Dallas, Texas." Pet. ¶ ¶ 2.03. However, at the time the Petition was filed and as of the date of this Notice, Defendant Jefferies was and is incorporated in Delaware with its principal place of business at 520 Madison Avenue, New York, New York 10022, and is thus a citizen of Delaware and New York. Plaintiff concedes this point later in the Petition by stating that "Defendant Jefferies Group, Inc. is *a foreign corporation* authorized to do and doing business in the state of Texas." Pet. ¶ 4.02 (emphasis added).

7. Plaintiff alleges that at the time the Petition was filed and as of the date of this Notice, Defendant Fred Ostrove was and is a resident of the State of New York. Therefore, Mr. Ostrove is a citizen of New York. *See* Pet. ¶ 2.03.

8. Based on the above facts, there is complete diversity of citizenship between Plaintiff and Defendants. Pet. ¶ 4.02 (emphasis added).

9. While Jefferies contends that Plaintiff's allegations are without merit and that Plaintiff is not entitled to any recovery, Plaintiff seeks damages in excess of $200,000. Pet. ¶

4.05. Therefore, the amount in controversy exceeds the jurisdictional requirement in a diversity case of $75,000, excluding interest and costs. *See* 28 U.S.C. § 1332(a).

III. PROCEDURAL MATTERS

10. Defendant Fred Ostrove has not been served with the Petition.[1] Therefore, his consent to removal is not required under 28 U.S.C. § 1446(b). However, Jefferies has consulted with Mr. Ostrove, and he consents to removal of the Petition, to the extent his consent is required.

11. All process, pleadings, orders, and other filings served upon Defendant Jefferies in the State Court Action are attached to this Notice as required by 28 U.S.C. § 1446(a) and Rule 81.1 of Civil Rules of the United States District Court for the Northern District of Texas. In particular, the following documents are attached:

a. completed civil cover sheet;

b. supplemental civil cover sheet;

c. notice of removal with the following exhibits attached to both the original and judge's copy:

   i. index of all documents filed in state court [Exhibit A];

   ii. copy of the docket sheet in the state court action [Exhibit A:1];

[1] In the Petition, Plaintiff requests that Defendant Fred Ostrove be served through the Secretary of State of the State of Texas. Pet. ¶ 2.03. Upon information and belief, to date the Secretary of State has not served Mr. Ostrove with the Petition. In any event, Mr. Ostrove may not be served with the Petition through the Secretary of State because this is not a proceeding arising out of business that Mr. Ostrove conducted in the state of Texas. *See* Tex. Civ. Prac. & Rem. Code Ann. § 17.044(b). Moreover, Plaintiff requested that the Secretary of State mail the Petition to Mr. Ostrove's "principal place of business" at Jefferies, 520 Madison Avenue, New York, New York 10022. Pet. ¶ 2.03. However, Texas case law is clear that service upon a non-resident defendant through the Secretary of State must be directed to the "home or home office" of the non-resident defendant. Therefore, Plaintiff has failed to comply with the Texas rules governing service of process. Tex. Civ. Prac. & Rem. Code § 17.045(a); *Boreham v. Hartsell*, 826 S.W.2d 193, 197 (Tex. App. - Dallas 1992, no writ) ("Because Hartsell did not allege the address he provided to the Secretary of State for service upon Boreham was either Boreham's *home* or *home office* address, he did not strictly comply with the statutory requirements of service under the Texas Long-Arm Statute.").

iii. each document filed in the state court action (excluding discovery material) [Exhibits A:2-8];

iv. a separately signed certificate of interested persons [Exhibit B].

12. For the purposes of removal under 28 U.S.C. § 1441(a), venue is proper in this district because the Northern District of Texas, Dallas Division, is the district and division that embraces Dallas County, where the removed action has been pending. 28 U.S.C. 124(a)(1). Jefferies reserves its rights to seek a transfer of venue after removal.

13. Plaintiff made a jury demand in the State Court Action. (Pet. ¶ 11.01.) No trial in the State Court Action has commenced.

14. Upon filing this Notice, Jefferies will provide written notification to Plaintiff and will promptly file a copy of this Notice with the District Clerk for Dallas County, Texas.

IV. CONCLUSION

15. Because there is complete diversity between the parties and the amount in controversy exceeds $75,000, this Court has subject matter jurisdiction over the Petition. Furthermore, Jefferies filed this Notice within thirty days of service of the Petition in the district court that embraces the county where the State Court Action has been pending, and complied with all requirements of 28 U.S.C. § 1446 and the Civil Rules of the Northern District of Texas. Therefore, removal is proper.

WHEREFORE, Defendant Jefferies hereby removes this action pending against it in the district court of Dallas County.

Dated: November 14, 2016

Respectfully submitted,

/s/ William R. Thompson, II

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 14, 2016, a true and correct copy of the foregoing document and related attachments have been served on Plaintiff's counsel via electronic mail:

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/s/ William R. Thompson, II
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